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SEC

SERVICE DATE - MAY 19, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 41687

GRAIN LAND COOP v. CANADIAN PACIFIC LIMITED AND
SOO LINE RAILROAD COMPANY D/B/A CP RAIL SYSTEM

Decided: May 15, 1998

By complaint filed April 5, 1996, Grain Land Coop (Grain Land) alleges that Canadian Pacific Limited and Soo Line Railroad Company, doing business as Canadian Pacific Railway (collectively CP): (1) breached their common carrier obligation to provide transportation or service on reasonable request under 49 U.S.C. 11101, and failed to provide adequate car service under 49 U.S.C. 11121 (Count 1); (2) engaged in unreasonable practices by misrepresenting or recklessly disregarding material facts in violation of 49 U.S.C. 10702 (Count 2); and (3) engaged in discrimination and charged unreasonable rates in violation of 49 U.S.C. 10741 and 10702 (Count 3). Grain Land seeks damages of at least \$1.5 million; and opportunity costs of \$75,200. Grain Land also seeks an order requiring CP to cease and desist from those practices and requests that just and reasonable rates be prescribed.

In a decision served December 1, 1997, we granted Grain Land's discovery request to obtain certain shipper-specific waybill tapes and data. We also denied CP's motion to dismiss Counts 2 and 3 of the complaint. We ordered Grain Land to respond to CP's interrogatories concerning the basis for rate reasonableness and discrimination claims. Finally, we ordered Grain Land to file an amended complaint and provide required rate reasonableness information. Grain Land filed an amended complaint on December 31, 1997, which CP answered on January 20, 1998.¹

On March 2, 1998, CP filed a renewed motion to dismiss Count 2 of the complaint. A letter filed by Grain Land on March 9, 1998, indicates that the parties agreed to extend the time for filing Grain Land's response to the CP's motion until April 20, 1998. On April 17, 1998, Grain Land requested that the Board grant it an extension until July 31, 1998, to amend its complaint and respond to CP's renewed motion to dismiss Count 2. Grain Land's counsel, Barbara R. Kueppers, submitted a verified statement indicating that additional time was needed to analyze the extensive

¹ On January 23, 1998, CP filed a motion to dismiss Count 3. Grain Land replied on February 23, 1998, and also moved to unseal a document marked "HIGHLY CONFIDENTIAL" which was submitted as Exhibit 3 to a verified statement of Steven R. Hendrickson. Grain Land asserts that releasing the document is needed to show the thinking of CP officials concerning competition. CP opposes releasing the document, contending that the document is available to the Board and its staff under a Stipulated Protective Order. We will address Grain Land's motion to unseal Exhibit 3 when we consider the merits of CP's motion to dismiss.

data that were obtained as a result of the December 1 decision. A letter dated December 4, 1997 from CP's counsel to Ms. Kueppers, submitted as Exhibit A to her verified statement, indicates that more than 60,000 pages of documents and 9-track reel tapes were being made available to comply with the December 1 decision. Ms. Kueppers states that after the data are analyzed, Grain Land expects to amend its complaint to supplement its allegations of unreasonable practices regarding CP's car allocation procedures. She further indicates that she is a sole practitioner and has two trials scheduled during May and June 1998. She expects that the requested extension would provide sufficient time to analyze the produced data and amend the complaint.

On May 6, 1998, CP responded, opposing the extension request. CP asserts that Grain Land has not justified an extension. CP states further that its renewed motion filed February 23, 1998, is essentially the same motion it had previously filed on July 30, 1997, to which Grain Land responded on August 19, 1997, and was denied in the December 1 decision. CP states that it produced the documents in December 1997 in response to the December 1 decision, and previously granted Grain Land a 5-week extension. CP also alleges that there was nothing in the renewed motion that had not been its original motion to dismiss Count 2. CP further asserts that further analysis of the documents is not necessary for Grain Land to respond to its motion to dismiss because its motion to dismiss presented only the legal question whether Grain Land's fraud and misrepresentation assertions in Count 2 constitute an unreasonable practice under 49 U.S.C. 10702.

On May 13, 1998, Grain Land filed a reply to CP's response.² Ms. Kueppers states that she has not received all the documents required from CP. In support, she submitted a letter to CP's counsel dated May 5, 1998, listing approximately 13,000 pages of documents which were requested but had not been reproduced.

Grain Land's extension request will be granted. The December 1 decision determined that CP should make the shipper-specific data available to Grain Land. Considering the apparent large volume of the data and information that was made available under the December 1 decision, it would be unreasonable to limit Grain Land's ability to analyze that data and information. Moreover Grain Land has not as yet received all the documents due from CP. These circumstances warrant granting the requested extension.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. Grain Land's extension request is granted.

² While replies to replies are contrary to Board procedure, 49 CFR 1104.13(c), Grain Land's response will be accepted for a complete record.

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2. Grain Land's response to CP's renewed motion to dismiss Count 2 is due July 31, 1998.

3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary

Vernon A. Williams
Secretary